

### § 3001.67b

(b) of this section, the Commission will determine which issues constitute genuine issues of material fact and concomitantly order the limitation of trial-type hearing procedures to those issues. The order issued for this purpose will also set forth to the greatest extent feasible the procedures to be followed in disposing of issues not found to be genuine issues of material fact. According to the nature of the individual issue, these procedures may include.

(1) Filing of written comments and reply comments;

(2) Conference procedures, followed or accompanied by the filing of written comments and reply comments; and

(3) Briefing and argument.

In determining the procedures to be followed with respect to issues not requiring a trial-type hearing, the Commission will seek to accommodate the needs of expedition and procedural fairness in accordance with section 3624(b) of the Act.

[45 FR 83226, Dec. 18, 1980]

### § 3001.67b Requests involving experimental changes—unavailability of data.

If the Postal Service believes that data required to be filed under § 3001.64 are unavailable, it shall explain their unavailability as required by § 3001.64(a)(2)(i), (ii), and (iv). In particular, if the experimental character of the request bears on the unavailability of the data in question, the Postal Service shall explain in detail the nexus between these circumstances. A satisfactory explanation of the unavailability of data will be grounds for excluding from the proceeding a contention that the absence of the data should form a basis for rejection of the request, unless the party desiring to make such contention (a) demonstrates that, having regard to all the facts and circumstances of the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the data which are unavailable, or (b) demonstrates other compelling and exceptional circumstances requiring that the absence of the data in

### 39 CFR Ch. III (7–1–05 Edition)

question be treated as bearing on the merits of the proposal.

[45 FR 83227, Dec. 18, 1980]

### § 3001.67c Requests involving experimental changes—plans for data collection.

(a) In any instance in which the Postal Service designates as unavailable data called for by § 3001.64, it shall, as part of its initial filing under that rule, either

(1) Describe with particularity the means it proposes to employ to collect those data, or

(2) State with particularity the reasons it believes establish that such data are unnecessary.

The Commission may by order require data to be collected during the course of the experiment which the Postal Service has not planned to collect, if it finds that a statement under paragraph (a)(2) of this section does not justify the omission to collect the particular data in issue.

(b) In the case of data which are not required to be filed under § 3001.64, but which the Postal Service intends to collect during and for the purposes of the proposed experimental change, the Postal Service shall include in its initial filing a detailed description of the data involved, the uses to which they would be put, and the methods to be employed in collecting them.

[45 FR 83227, Dec. 18, 1980]

### § 3001.67d Requests involving experimental changes—time limit.

The Commission will treat cases falling under §§ 3001.67 through 3001.67d as subject to the maximum expedition consistent with procedural fairness. The schedule for adoption of a recommended decision will therefore be established, in each such case, to allow for issuance of such decision not more than 150 days from the determination of any issue as to the propriety of experimental treatment under § 3001.67 (b) and (c) in a sense favorable to such treatment, or from the date of the filing of the request, whichever occurs later. Nothing in this section shall be construed to affect the rights of the Postal Service or of other parties with